IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 306 of 2007
Date of Decision: 30.1.2007

Khattu Ram ...Appellant

Versus

Charan Dass and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri K.S. Dhaliwal, Advocate, for the appellant.

HEMANT GUPTA, J.

Defendant No.2 – Khattu Ram, is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for specific performance of an agreement dated 19.6.1997 in respect of the land measuring 23 kanals 4 marla was decreed.

Vide the aforesaid agreement, defendant No.1 Surinder Singh agreed to sell the land measuring 23 kanals 4 marlas for a sale consideration of Rs.1,10,000/- per acre along with rights appurtenant thereto. A sum of Rs.1,50,000/- was paid as earnest money on the said day and the sale deed was to be executed on or before 15.6.1998. Since defendant No. 1 failed to execute the sale deed on the date fixed, the present suit for specific performance was filed on 30.7.1998.

Defendant No. 1 in his written statement denied the execution of the agreement with the plaintiff. The defendant No.2 relied upon an agreement of sale dated 5.4.1997 in respect of the land measuring

20 kanals 10 marlas for a total consideration of Rs.3,91,000/- and that in pursuance of the said agreement, the defendant No.1 executed sale deed on 1.6.1998. Defendant No.2 alleged that he is bona-fide purchaser for value and consideration.

Both the Courts have recorded concurrent finding of fact that the agreement of sale dated 19.6.1997 is proved to be executed. Such finding has been recorded on the basis of statements of the attesting witnesses Ruldu-PW1, Payara Ram-PW8, and the Scribe Sham Lal-PW2. The plaintiff has also examined the Handwriting Expert Dr. Atul Singla as PW7. The attesting witnesses and the scribe have also deposed that sum of Rs.1,50,000/- was paid to Surinder Singh at the time of execution of the agreement of sale. Both the Courts have also found that the plaintiff was ready and willing to perform his part of the contract. It has been so found on the basis of the application filed by the plaintiff before the Sub Registrar as well as by examining the official from the Oriental Bank as PW6 to prove that he had the requisite funds in the Bank for execution of the sale deed.

However, the learned trial Court has recorded a finding on issue No. 5 that defendant No. 2 is a bona-fide purchaser for value and consideration but the said finding has been reversed by the learned first Appellate Court holding that defendant No. 2 is not bona-fide purchaser for value and consideration. It has been found that the sale deed dated 30.6.1998 Exhibit P.13 does not contain any recital about the agreement of sale dated 5.4.1997 though the entire sale consideration is alleged to be paid at the time of execution of the agreement of sale on 5.4.1997. Still further, it was found that there was no explanation to the effect as to why the sale deed was not executed for a period of 14 months

even when the entire sale consideration was purportedly paid on 5.4.1997. Still further, the Court has considered the statement of the appellant-Khattu Ram, who has deposed that the sale consideration was paid just 10 days before the execution of the sale deed, which is contrary to his stand in the written statement that the sale consideration was paid at the time of the execution of the agreement of sale.

The sole argument raised by the learned counsel for the appellant before this Court is that the learned first Appellate Court has reversed the finding on issue No. 5 without any cross-appeal or cross-objections in respect of such finding recorded by the learned trial Court. However, I do not find any substance in the said argument raised by the learned counsel for the appellant. The learned trial Court has decreed the suit of the plaintiff and directed defendant No.1 to execute the sale deed on the basis of agreement dated 19.6.1997 on payment of balance sale consideration. The learned trial Court also directed defendant No.1 to execute fresh sale deed in favour of defendant No.2 after adjusting the land agreed to be sold to the plaintiff.

Since the suit of the plaintiff has been decreed in its entirety i.e. in respect of agreement of sale of the land measuring 23 kanals 4 marlas, it was open to the learned first Appellate Court to reverse the finding on issue No. 5. Such jurisdiction is vested with the learned first Appellate Court in terms of Order 41 Rule 33 of the Code of Civil Procedure. The first Appellate Court has maintained decree granted by the trial Court while reversing a finding on issue No. 5. Such decree has the effect of maintaining his sale deed in respect of the remaining land. The learned first Appellate Court has rightly directed defendant No.2- the

present appellant to execute the sale deed in respect of the land measuring 23 kanals 4 marlas in pursuance of the agreement dated 19.6.1997.

In view of the above, I do not find any patent illegality or irregularity in the judgment and decree passed by the learned first Appellate Court, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

30-1-2007 (HEMANT GUPTA)
ds JUDGE